

<p>The Pensions Regulator</p>	<p>DETERMINATION NOTICE under 96(2)(d) of the Pensions Act 2004 (“the Act”)</p> <p>Streamline L G Pension Scheme (“the Scheme”)</p>	<p>The Pensions Regulator case ref:</p> <p>TM10843</p>
-----------------------------------	--	---

1. The Determinations Panel (the “Panel”) on behalf of the Pensions Regulator, met on 15 March 2011 to decide whether to exercise a reserved Regulatory function in relation to the issues in the Warning Notice dated 8 February 2011. The Pensions Regulator considered under Section 10(2) of the Pensions Act 2004 that the exercise of a reserved Regulatory function was appropriate.

2. **Matter to be determined:**

The functions the Panel were asked to exercise were the applications made by the Regulator:

- (a) to appoint a Trustee to the Scheme under Section 7(3)(d) of the Pensions Act 1995 (“the 1995 Act”);
- (b) under Section 7(5)(b) of the 1995 Act, to require that the trustee appointed be paid fees and expenses out of the Scheme’s resources;
- (c) under Section 8(4)(b) of the 1995 Act to make provision for the powers or duties of a trustee appointed under Section 7 of the 1995 Act to be exercisable by a trustee to the exclusion of other trustees; and:
- (d) under Section 9 of the 1995 Act to make an order vesting any property in, or transferring property to, a Trustee appointed under Section 7 of the 1995 Act.

3. **Parties**

The Warning Notice specified the following parties at (a) to (c) as being directly affected by the Regulatory action outlined in the Warning Notice. The Warning Notice did not include the party listed at (f).

- (a) Jarvis Pension Trustee Ltd – (Current Trustee)
- (b) Mr Nicholas Guy Edwards
- (c) Mr Neville Barry Khan
- (d) Mr Ian Brown
- (e) Mr Philip Stephen Bowers – (Joint Administrators of Jarvis PLC)
- (f) Independent Trustee Services Limited – (as the newly appointed Trustee).

4. Background to Application

- (a) The Scheme is a defined benefit scheme that was established under trust with effect from 1 September 1997. The principal employer of the Scheme is Jarvis Plc (“Jarvis”). Jarvis Traffic Systems Ltd (“JTSL”), Jarvis Accommodation Services Ltd, Jarvis Rail Ltd and Somerford Equipment Ltd are all participating employers in the Scheme.
- (b) Jarvis Pension Trustees Ltd (“JPL”) was appointed as trustee with effect from 30 May 2007. The directors of JPL were XXXXXX XXXXXXXX, XXX XXXXXXXX and XXXXXX XXXXXXXX.
- (c) On 26 March 2010, Jarvis entered into administration and Deloitte LLP (“Deloitte”) was appointed as Administrator. Section 120 notices advising of the insolvency event were submitted to the Pensions Regulator (“the Regulator”).
- (d) On 9 June 2010, XXXXXX XXXXXXXX and XXX XXXXXXXX resigned as directors of JPL, leaving XXXXXX XXXXXXXX as the sole director of JPL.
- (e) JPL’s Articles of Association state that a minimum of two directors are required to form a quorum. As a consequence of the resignations of XXXXXX XXXXXXXX and XXX XXXXXXXX, the board of JPL is unable to transact any business other than the appointment of an additional director/independent trustee director.
- (f) As a result the ability of JPL to effectively govern the Scheme is significantly compromised as the remaining trustee is unable to take any decisions.
- (g) According to the Scheme rules, the power to appoint and remove trustees is vested in the principal employer.
- (h) Jarvis is in administration and therefore unable to exercise this power. On 14 November 2010, XXXXXX XXXXXXXX wrote to Deloitte to ask whether they would consider exercising their power as de facto employer to appoint an independent trustee to the Scheme. No response has been received.
- (i) Prior to the insolvency of Jarvis, and in view of the pending resignations of XXXXXX XXXXXXXX and XXX XXXXXXXX, JPL considered appointing an independent trustee to work alongside XXXXXX XXXXXXXX. JPL approached several companies in this respect including XXXXXXXXXXXX XXXXXX XXXXXXXX (“XXX”) however no appointment was made at this time.

- (j) The possibility of XXXXXX XXXXXXXX appointing a co-director was further explored by JPL's legal advisers, DLA Piper ("DLA") and it was subsequently established that in principle XXX would be willing to work alongside XX XXXXXXXX. However for a number of reasons this has not happened and seems unlikely to be practicable
- (k) There is no other entity that has the power to appoint an independent trustee to this Scheme.
- (l) One of the statutory objectives of the Regulator is to protect members' benefits. The Regulator is of the view that whilst the ability of JPL to operate effectively as trustee is compromised there is a risk to members that the Scheme is not being properly governed and members' interests are not being adequately protected. This is of particular concern due to the fact that some parts of the Scheme have entered a PPF assessment period and will require a fully engaged trustee to guide it through this process.
- (m) Whilst XXXXXX XXXXXXXX has for several months been acting as trustee in these circumstances, it appears that he may be unwilling to remain in this capacity in view of the substantial problems caused by his being the sole director of JPL being in breach of its Articles of Association.
- (n) Under section 89 of the Pensions Act 2004, the Regulator may, if it considers it appropriate to do so, publish a report of the consideration given by it to the exercise of its functions and the results of that consideration. The Regulator considers that publication would be appropriate in this case.

5. Decision

- a) The Panel agreed that it was appropriate to make the following orders:
 - i. to appoint a Trustee to the Scheme under Section 7(3)(d) of the Pensions Act 1995 ("the 1995 Act");
 - ii. under Section 7(5)(b) of the 1995 Act, to require that the trustee appointed be paid fees and expenses out of the Scheme's resources;
 - iii. under Section 8(4)(b) of the 1995 Act to make provision for the powers or duties of a trustee appointed under Section 7 of the 1995 Act to be exercisable by a trustee to the exclusion of other trustees; and:
 - iv. under Section 9 of the 1995 Act to make an order vesting any property in, or transferring property to, a Trustee appointed under Section 7 of the 1995 Act.

Appointment of Trustee under Section 7 of the 1995 Act

The Pensions Regulator hereby orders that:

1. Independent Trustee Services Limited, of 6 Crutched Friars, London, EC3N 2PH is hereby appointed as trustee of the Streamline Pension Fund (“the Scheme”) with effect on and from 15 March 2011.
2. This order is made because the Pensions Regulator is satisfied that it is reasonable to do so, pursuant to the relevant provisions of the Pensions Act 1995 as set out below, in order:
 - i. to protect the interests of the generality of the members of the Scheme pursuant to Section 7(3)(d);
3. The powers and duties exercisable by Independent Trustee Services Limited shall be to the exclusion of all other trustees of the Scheme pursuant to Section 8(4)(b) of the Pensions Act 1995.
4. Independent Trustee Services Limited’s fees and expenses shall be paid out of the Scheme’s resources pursuant to Section 7(5)(b) of the Pensions Act 1995.
5. This order:
 - i. will take immediate effect on the date of this order;
 - ii. may be terminated, or the appointed trustee replaced, at the expiration of 28 days notice from the Pensions Regulator to the appointed trustee, pursuant to Section 7(5)(c) of the Pensions Act 1995.

Vesting Order under Section 9 of the 1995 Act

1. The Pensions Regulator hereby orders the vesting in, and the assignation and transfer to Independent Trustee Services Limited, 6 Crutched Friars, London, EC3N 2PH, as trustee of the Streamline Pension Fund, appointed under Section 7 of the Pensions Act 1995 by the Pensions Regulator, of all property and assets of the above scheme, heritable and moveable, real and personal, of every description and wherever situated.
2. This order is made by the Pensions Regulator pursuant to Section 9 of the Pensions Act 1995, as amended.
3. This Order will take immediate effect on the date of this Order.

6. **Submissions of the parties**

In making the determination the Panel took into account the evidence and submissions included in the Warning Notice.

7. **Statutory issues**

In making their decision the Panel had regard to the objectives of the Regulator as set out in Section 5 of the Pensions Act 2004 and to the matters mentioned in Section 100, as set out in **Appendix 1**.

8. **Reasons for decision**

- a) XX XXXXXXXXXX is the only director of JPL and due to the terms of the articles of association is unless an additional director is appointed unable to have the ability to do what is needed to carry out the responsibilities of trusteeship fully. There is also a possibility that he will not be willing to continue doing what he is currently doing. Thus JTSL's ability to do its duty is compromised. It seems unlikely that those who have the power to rectify the situation being able in the near future to do so.
- b) Taking account of the Regulator's objectives and Section 100 of the Act the Panel is satisfied that it is not only reasonable, but indeed necessary, to appoint an independent trustee to this Scheme.
- c) The power to appoint trustees is vested in the Scheme's Principal Employer but JTSL in administration does not appear willing to make any appointment.
- d) Action to reinvigorate JPL has been considered but has not been implemented.
- e) The appointed administrators in their submissions indicated that they had no objection to the exercise of the Regulator's powers to appoint a director of the trustee of the scheme namely JPL. As this was not the proposed action indicated in the Warning Notice the panel have interpreted this as an indication that they have no objection to the action which was proposed, namely the exercise of the power to appoint a new and independent trustee.
- f) It is important that there is an active trustee in place with the appropriate knowledge and experience to look after the interests of members and the assets of the Scheme and there is no one other than the Regulator with the power to take the necessary action.

9. **Appendix 2** to this Determination Notice contains important information about the rights of appeal of the parties against this decision.

Signed:

Chairman: **Michael Maunsell**

Dated: 21 March 2011

5 of the Pensions Act 2004
Regulator's objectives

- (1) The main objectives of the Regulator in exercising its functions are –
- (a) to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes,
 - (b) to protect the benefits under personal pension schemes of, or in respect of, members of such schemes within sub (2),
 - (c) to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (see Part 2), and
 - (d) to promote, and to improve understanding of, the good administration of work-based pension schemes.
- (2) For the purposes of sub (1)(b) the members of personal pension schemes within this sub are-
- (a) the members who are employees in respect of whom direct payment arrangements exist, and
 - (b) where the scheme is a stakeholder pension scheme, any other members.
- (3) In this -
- “stakeholder pension scheme” means a personal pension scheme, which is or has been registered under 2 of the Welfare Reform and Pensions Act 1999 (c.30)(register of stakeholder schemes);
- “work-based pension scheme” means-
- (a) an occupational pension scheme,
 - (b) a personal pensions scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, or
 - (c) a stakeholder pension scheme.

100 of Pensions Act 2004
Duty to have regard to the interests of members etc

- (1) The Regulator must have regard to the matters mentioned in sub (2) –
- (a) when determining whether to exercise a Regulatory function –
 - (i) in a case where the requirements of the standard or special procedure apply, or
 - (ii) on a review under 99, and
 - (b) when exercising the Regulatory function in question.
- (2) Those matters are –
- (a) the interests of the generality of the members of the scheme to which the exercise of the function relates, and
 - (b) the interests of such persons as appear to the Regulator to be directly affected by the exercise.

Referral to the Tax and Chancery Chamber of the Upper Tribunal (“the Tribunal”)

You have the right to refer the matter to which this Determination Notice relates to the Tribunal. Under section 103 of the Pensions Act 2004 (“the Act”) you have 28 days from the date this Determination Notice is given to refer the matter to the Tribunal or such other period as specified in the Tribunal rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this Determination Notice. The Tribunal’s address is:

The Tax and Chancery Chamber of the Upper Tribunal
45 Bedford Square
London
WC1B 3DN
Tel: 020 7612 9700

The detailed procedures for making a reference to the Tribunal are contained in section 103 of the Act and the Tribunal Rules.

You should note that the Tribunal rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the reference notice to The Pensions Regulator. Any copy reference notice should be sent to:

Determinations Support
The Pensions Regulator,
Napier House
Trafalgar Place
Brighton
BN1 4DW.
Tel: 01273 811852